IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7730 OF 2006

Shekhar A. Shetty
(M/s. Dimple Lodging & Boarding) .. Petitioner.

vs.

The Sub-Divisional Magistrate,
Thane & Ors. .. Respondents.

Smt. Veena B. Thadani with Mr. Vishal Thadani
for petitioner.
Mr. A.H. Palekar, AGP. for State.

CORAM : A.P. DESHPANDE, J.

DATE : 28th November, 2006.

P.C.

. An order passed by the Sub-Divisional Magistrate dated 4.7.2006 cancelling the licence granted to the petitioner for running a lodging boarding is challenged by filing the present writ petition.

2. The only ground on which the impugned order is assailed is that the said order is passed in breach of the principles of natural justice and without affording any opportunity to the petitioner

of being heard in the matter. A perusal of the order dated 4.7.2006 leaves no room of doubt that the S.D.M. has cancelled the licence without affording an opportunity of hearing to the petitioner. The learned AGP representing the respondents does not dispute the fact that the impugned order has been passed without issuing any show cause notice and without affording an opportunity of hearing to the present petitioner. Rule 30 of the Public Entertainment Licence Rules provides that no licence granted under these rules shall be cancelled unless the holder of the licence is given a reasonable opportunity of showing cause as to why his licence should not be cancelled or suspended, as the case may be. The proviso permitted suspension for a limited period, pending an enquiry. However, the proviso is not attracted in the facts of the present case as the impugned order is of cancellation of licence and on the face of it unsustainable in law and in breach of the principles of natural justice. I do not find it necessary to relegate the petitioner to the alternative remedy available in the form of appeal, having regard to the undisputed fact that the impugned order has been passed without affording an opportunity to the petitioner of being heard in the matter. The order dated 4.7.2006 under challenge deserves to be quashed and set aside and I accordingly quash and set aside the same. It is

made clear that it shall be open for the respondents to take appropriate action in accordance with law after affording an opportunity to the petitioner of bearing heard in the matter.

3. Rule is made absolute in the above terms. It is needless to mention that the observations made in this order shall not weigh with the competent authority if a fresh action is resorted to.

(A.P. Deshpande, J.)